

TITLE 16
DEPARTMENT OF REGULATORY AGENCIES
CHAPTER 107
RULES RELATING TO HORIZONTAL PROPERTY REGIMES,
CHAPTER 514A, HAWAII REVISED STATUTES

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-107-1 Objective. These rules adopted by the real estate commission, hereafter referred to as "commission," are intended to clarify and implement chapter 514A, Hawaii Revised Statutes, to the end that the provisions thereunder may best be effectuated and the public interest most effectively served. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-45)

§16-107-2 Definitions. Definitions of terms found in section 514A-3, HRS, shall be adopted by reference. In addition, the following definitions shall be included:

"Apartment" means unit.

"Apartment owner" means unit owner.

"Administrative rules and regulations" means house rules.

"Certificate of occupancy" means and include the first certificate of occupancy or temporary certificate of occupancy issued for the structure or structures constructed on the project site.

"Determination", as used in section 514A-87(b), HRS shall include, but not be limited to, house rules.

"Disclosure abstract" means the abstract referred to in section 514A-6I, HRS.

"First conveyance" means and includes the initial transfer of title or equitable title from developer by way of deed, lease, assignment of lease or agreement of sale.

"Material respect" as used in section 514A-63, HRS means:

- (1) Any change in the use, size, construction materials or location of an apartment or any limited common element appurtenant thereto as determined by the commission;
- (2) Any addition, deletion, or change in the common elements which affects their size, use or construction materials as determined by the commission; or
- (3) Any change in the percentage of common interest, and any other change as determined by the commission.

"Offer for sale" means and includes any advertisement, inducement, solicitation of letters of intent to purchase, or any attempt of whatever nature to encourage any person to acquire any legal or equitable interest in any condominium unit. The method used in offering for sale shall include, but not be limited to, sales contracts, agreements of sales, reservation agreements, options to purchase, solicitation or acquiring of interested parties list whether general or specific, posting of signs indicating that the project is a condominium project, or giving of the selling agent's name or address or telephone number.

"Verified statement" means a sworn and notarized statement. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-45)

SUBCHAPTER 2

REQUIREMENTS FOR FILING HORIZONTAL PROPERTY REGIMES

§16-107-3 Filing of parking plan. If the parking stalls are designated as limited common elements, the developer shall submit with his notice of intention a definite parking assignment plan specifying the unit each parking stall is appurtenant to. The parking plan shall indicate whether each stall is a regular size and covered or uncovered. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-40(7))

§16-107-4 Filing of construction plan. Prior to the issuance of a final public report, the developer shall file with the commission a copy of the complete construction plan and attached thereto shall be a verified statement of a registered architect or professional engineer of this State certifying that the plan is an accurate copy of the plan as filed with and approved by the county or city and

county officer having jurisdiction over the issuance of permits for construction of buildings. In lieu of the foregoing, the developer may submit a copy of the complete construction plan and attached thereto shall be a verified statement of a registered architect or professional engineer of this State that the plans fully and accurately depicts the layout, location, apartment numbers, and dimensions of the apartments as built. On an existing structure, the commission may accept a site plan, floor plan of each floor, and elevation plan and attached thereto shall be an as built certificate of a registered architect or professional engineer of this State. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-40)

§16-107-5 Method in computing percentage of common interest. At the time of filing the notice of intention, the developer shall submit a written explanation of the method of formula used in computing the percentage of common interest appurtenant to the condominium units. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §§514A-3(7), 514A-11(6), 514A-13(a) (b))

§16-107-6 Method of computing floor area. The floor area of the apartment or unit shall be computed and reported in the declaration and commission's public report as net living area. The net living area of the enclosed portion of the apartment shall be measured from the interior surface of the apartment perimeter walls. Areas of lanai or patio, which are considered as part of the apartment, shall be computed and reported separate from the enclosed apartment area. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-11(3))

§16-107-7 Escrow arrangement. Purchasers' monies received by an escrow prior to the issuance of a final public report shall be deposited in a trust fund with a bank, savings and loan association, or trust company authorized by the bank examination division, department of regulatory agencies, to do business under an escrow arrangement. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §§514A-65, 514A-67)

§16-107-8 Evidence of sufficient funds to complete the total project cost. Developer's statement of satisfactory evidence of sufficient funds as prescribed

under section 514A-40(3), HRS, shall be a verified statement. [Eff 6/12/81; comp
] (Auth: HRS §514A-45) (Imp: HRS §514A-40(3))

§16-107-9 Evidence of performance bond. In lieu of a performance bond of not less than 100 per cent of the construction cost called for in section 514A-49(5), HRS, the commission may accept an irrevocable letter of credit issued by a federally insured lending institution authorized by the bank examination division, department of regulatory agencies, committing funds for 100 per cent of the construction cost. [Eff 6/12/81; comp
] (Auth: HRS §514A-45) (Imp: HRS §514A-40(5))

§16-107-10 Filing of disclosure abstract. At the time of filing the notice of intention, the developer shall submit a copy of his disclosure abstract, which will become an exhibit to the initial public report issued by the commission. The disclosure abstract shall be dated. In the event there occurs any change or changes to the information contained in the original disclosure abstract, the developer shall prepare and submit to the commission a copy of an amended disclosure abstract which shall be dated. It shall be the responsibility of the developer to provide to each prospective initial purchaser a copy of the original abstract and/or the amended abstract. Upon the issuance of the original and/or the amended abstract to each prospective initial purchaser by the developer or its sales agent, the prospective initial purchaser shall execute a dated receipt of the original and/or amended abstract. Receipts taken shall be kept on file in possession of the developer subject to inspection at any reasonable time by the commission or its authorized representative for a period of three years from the date the receipt was taken. [Eff 6/12/81; comp
] (Auth: HRS §§514A-45, 514A-61(c)) (Imp: HRS §514A-61)

§16-107-11 Filing of other documents. The commission may require filing of other documents, papers, data and information to complete the condominium registration file. [Eff 6/12/81; comp
] (Auth: HRS §514A-45) (Imp: HRS §514A-39)

§16-107-12 (Reserved)

§16-107-13 (Reserved)

§16-107-14 (Reserved)

§16-107-15 (Reserved)

SUBCHAPTER 3

PUBLIC REPORTS

§16-107-16 Copies of public reports. Five copies of each public report shall be furnished the developer by the commission at no charge; if additional copies are necessary, they will be secured by the developer at his expense. Copies of the public report shall be of the color prescribed by the commission. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-42)

§16-107-17 Public report not to be represented as approval of project. A developer shall not make any representations to cause or lead a prospective purchaser to believe that the commission's public report is an approval of a project. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-36)

§16-107-18 Issuance of public reports to purchasers and prospective purchasers. Copies of all public reports issued for the project shall be given to purchasers and prospective purchasers of a unit in the condominium project in a sale of such unit by the developer after a cancellation of an original sale or the repossession of such unit as in the case of an original sale of such unit; this requirement shall equally apply to a sale subsequent to any sham or collusive sale by the developer designed to avoid the giving of such reports. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-62)

§16-107-19 Expiration of public reports. Sales contracts executed during any period the commission's most recent public report is not in effect may be rescinded at the option of the purchaser and all monies refunded to purchaser. Purchaser's right to rescind contained in this rule shall be voided thirty calendar days after receipt of written notification of his rescission rights from the developer

or his agent. [Eff 6/12/81; comp] (Auth: HRS §514A-45)
(Imp: HRS §§514A-31, 514A-43)

§16-107-20 Offer for sale to nonowner-occupant. Developers, agents, or developer's representatives are prohibited from making any offer for sale of residential units to a nonowner-occupant prior to issuance of the commission's preliminary or final public report for the project. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-31)

§16-107-21 (Reserved)

§16-107-22 (Reserved)

SUBCHAPTER 4

ADVERTISEMENTS

§16-107-23 Filing of advertisement materials. Circulars, prospectus, brochures, pamphlets, leaflets, and all other advertising and promotional material on the condominium plan or project shall not be issued, circulated or published before a copy thereof shall have been previously filed with the commission. Such filing shall not be construed to mean an approval by the commission of the advertising and promotional material. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-68)

§16-107-24 Use of public report for advertising. The commission's public report shall not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized, or printed in larger or heavier type than the remainder of the report, unless the true copy of the report furnished by the commission so indicates. [Eff 6/12/81; comp] (Auth: HRS §514A-45) (Imp: HRS §514A-42)

§16-107-25 Publication of announcement. The publication of announcement called for under HRS §514A-102 shall be published not less than

two days per week in two successive weeks. [Eff 6/12/81; comp
] (Auth: HRS §514A-45) (Imp: HRS §514A-102)

§16-107-26 (Reserved)

§16-107-27 (Reserved)

SUBCHAPTER 5

REQUIREMENTS FOR OWNER-OCCUPANT SALES

§16-107-28 Sales exempt from owner-occupant requirements. Residential condominium projects built in a county zoned or designated hotel and resort areas shall be exempt from the provisions of Part VI, Sales to Owner-Occupants, of chapter 514A, HRS. Residential condominium projects situated in Waikiki shall not be exempt from the provisions of Part VI, Sales to Owner-Occupants, of chapter 514A, HRS. [Eff 6/12/81; comp] (Auth: HRS §§514A-45, 514A-107) (Imp: HRS §514A-101(2))

§16-107-29 Filing of copy of newspaper announcement and proof of publication. The developer shall file with his notice of intention a copy of the newspaper announcement and proof of publication of announcement in the form of an affidavit from the newspaper agency or company. The affidavit shall contain the dates announcements appeared in the newspaper. [Eff 6/12/81; comp] (Auth: HRS §§514A-45, 514A-107) (Imp: HRS §514A-102)

§16-107-30 Filing of specimen copies of forms. The developer shall file with his notice of intention a specimen copy of the following forms which he proposes to use in connection with sales of residential units to owner-occupants:

- (1) Affidavit of intent to become an owner-occupant of a residential unit;
- (2) Reservation agreement between developer; and
- (3) Sales contract between owner-occupant and developer.

In addition to the above specimen forms, developers converting existing residential units to residential condominium units shall submit a specimen copy of the

ninety-day notice to the existing tenants. The ninety-day notice shall contain notice of tenants first right of refusal to purchase the unit occupied by tenant prior to conversion. [Eff 6/12/81; comp] (Auth: HRS §§514A-45, 514A-107) (Imp: HRS §§514A-104(1), 514A-105)

The Real Estate Commission adopted the rules relating to horizontal property regimes on November 21, 1980 following a public hearing held on October 30, 1980. The announcement for the public hearing was published in the Honolulu Star-Bulletin and Advertiser on October 5, 1980.

Chapter 107 of Title 16, Rules Relating to Horizontal Property Regimes of the Real Estate Commission, shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ George A. Morris
GEORGE A. MORRIS, Chairman
Real Estate Commission

APPROVED AS TO FORM: Date 5/12/81

/s/ Randall Y. Iwase
Deputy Attorney General

APPROVED: Date 5/27/81

/s/ Mary G. F. Bitterman
MARY G. F. BITTERMAN
Director of Regulatory Agencies

APPROVED: Date 6/1/81

/s/ George R. Ariyoshi
GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII

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